THE HON'BLE THE ACTING CHIEFJUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 9407 OF 2007

DATE: 31-12-2007

Between:

Fisherman Youth Welfare Association, Pada Jalaaripeta, Waltair Bus Depot-I, Lawasons Bay Colony, Visakhapatnam and another

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Petitioner

and

Visakhapatnam Urban Development Authority rep. By its Vice Chairman, Siripuram, Visakhapatnam and others.

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Respondents

THE HON'BLE THE ACTING CHIEFJUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 9407 OF 2007

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed to declare the action of the respondents in going ahead with the construction activity of laying the road from Visakhapatnam to Bheemunipatnam, in violation of the CRZ notification and the conditions imposed by the Government of India, Ministry of Environment and Forests, in their letter dated 04.03.2005, as illegal. The petitioners seek a consequential direction to the respondents not to take up any construction activity within CRZ-1, forest and other prohibited areas along the coastal stretch from Visakhapatnam to Bheemunipatnam.

The grievance of the petitioner is that, contrary to the Costal Regulatory Zone notification issued by the Central Government, road laying activity had been taken up between Kms 3 to 6 from Visakhapatnam to Bheemunipatnam which was damaging the sand dunes, that hills were being blasted and there were encroachments into CRZ-1 and the forest area of Chinagadili village. Petitioner contends that, despite their representation to the authorities that the road was being laid within CRZ-1 area,

without approval of the Central government, construction of the road was continued and completed. Petitioner would submit that the road which was laid passed through Survey Nos. 122 and 123 of Chinagadili village, contrary to condition No. XV of the permission granted by the Central government, and was required to be realigned outside CRZ-1 area. According to the Petitioner, the road being laid was primarily meant for industrial development along the beach which would result in stoppage of fishing activity affecting the livelihood of fishermen. Petitioner would seek dismantling of the road which was laid contrary to the CRZ notification and the conditional approval accorded by the Central Government.

In exercise of its powers under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 the Central Government issued a notification to declare the Coastal Stretches as Coastal Regulation Zones (CRZ) and for regulating activities within CRZ areas. The CRZ notification issued on 19th February 1991 was amended periodically. The amended notification dated 21.05.2002 prohibits certain activities. Under Clause 2 (xi), construction activities are prohibited in CRZ-1 except as specified in Annexure-I of the notification. Annexure-I is the Coastal Area Classification and Development Regulations and thereunder Coastal Regulation Zones are classified into four categories. Category I (CRZ-I) are the areas that are ecologically sensitive, such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs etc and include areas between the Low Tide Line and the High Tide Line. Annexure I prohibits new construction activity in CRZ-I except those enumerated thereunder. In accordance with the CRZ notification, the Central

Government, vide proceedings dated 04.03.2005, accorded environmental clearance for construction of the Coastal Road connecting Visakhapatnam and Bheemunipatnam subject to effective implementation of the conditions prescribed therein. Clause (xv) of the conditions required the road stretch in Survey Nos. 122 and 123 of Chinagadila village to be re-aligned outside the CRZ-I Area.

While counter-affidavits have been filed by all the respondents, including three by the Superintending Engineer, Roads & Buildings, it is wholly unnecessary to refer to all of them. Suffice to note that the Superintending Engineer, Roads and Buildings, initially contended that no road was laid in Survey Nos. 122 and 123 of Chinagadila village but later conceded that, while no new road was laid, the existing road was widened which, according to him, was not prohibited. This Court, in its order dated 12.11.2007, had observed that *prima facie* it appeared as if the CRZ regulations and the permission granted by the Ministry of Environment had been violated. On the views of the Central Government being sought, the Learned Assistant Solicitor General placed before us a copy of the letter addressed by the Additional Director, Ministry of Environment and Forest, Government of India to the Member Secretary, A.P. Coastal Management Authority dated 03.12.2007 wherein it was stated that monitoring was carried out on 27/28.11.2007 and, as per the monitoring report, the stretch between Kms. 3.00 to 3.4 had been strengthened in Survey Nos. 122 and 123 of Chinagadila village, which fell in the Coastal Regulatory Zone area. The Member Secretary was further informed that, as per the CRZ notification, 1991, such construction would require clearance from the competent authority viz., the

State Coastal Zone Management Authority and, since no permission had been obtained for such construction, necessary action should be initiated against the proponents for undertaking construction without prior permission from the A.P. Coastal Management Zone Authority as per the delegated provisions.

The assertions to the contrary notwithstanding, it is evident from the said letter dated 03.12.2007 that the Superintending Engineer, Roads and Buildings, in carrying out road widening in Kms. 3.00 to 3.4, in Survey Nos. 122 and 123 of Chinagadila village, had violated both the CRZ notification and the conditions of the order of approval of the Central Government dated 04.03.2005. Since the road widening exercise has already been completed, and as the Central Government has already requested the A.P. Coastal Management Authority to initiate action against the persons involved, it would suffice if the A.P. Coastal Zone Management Authority is directed to examine whether the road should be realigned to bring it in conformity with the CRZ regulations and the Central Government's permission and to take appropriate action against all the persons involved in accordance with law within a period of three months from the date of receipt of a copy of this order.

Sri K.S. Murthy, learned Counsel for the petitioner, would further contend that the respondents had also violated the CRZ notification in having blasted the hills. Learned Counsel would refer to paragraph 8 of the affidavit filed in support of the writ petition to contend that this specific averment regarding the hills being blasted has not been denied in any of the counter-affidavits filed by the respondents.

Sri V. Rajagopal Reddy, learned Counsel for

Visakhapatnam Urban Development Authority (VUDA), sought time on 07.12.2007 to file an additional counter-affidavit. In the additional counter-affidavit dated 10.12.2007, the Superintending Engineer, VUDA, has stated that no sand dunes were damaged, no hill were blasted and that there was no encroachment by VUDA in this area between Kms. 3.00 to 6.00 into CRZ-I and forest area of Chinagadili village. Before this Court also both the Learned Government Pleader for Transport and Sri V. Rajagopal Reddy, learned Standing Counsel for VUDA, while reiterating that no hills were blasted, expressed their readiness to have their undertaking recorded. Recording the undertaking of both the Learned Government Pleader for Transport and Sri V. Rajagopal Reddy, learned Standing Counsel for VUDA that no hills had been or were being blasted, the writ petition is disposed of. However, in the circumstances, without costs.

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BILAL NAZKI, HACJ

Date: .12.2007

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RAMESH RANGANATHAN, J

ASP/MRKR